MAJLIS PEGUAM MALAYSIA v. DHARSHAN SINGH ATMA SINGH

COURT OF APPEAL, PUTRAJAYA
DAVID WONG DAK WAH JCA
UMI KALTHUM ABDUL MAJID JCA
ZAMANI A RAHIM JCA
[CIVIL APPEAL NO: J-02(A)-25-01-2015]
29 JUNE 2016

LEGAL PROFESSION: *Roll of Advocates and Solicitors – Restoration on Roll – Discharge of duties – Advocate and solicitor committed serious acts of dishonesty and/or fraudulent conduct – Advocate and solicitor struck off Roll but restored on Roll by High Court – Restitution of monies owing made six months after application for reinstatement – Whether restitution an afterthought – Whether restitution grossly delayed – Whether advocate and solicitor truly showed repentance of past deeds – Whether fit and proper person to be re-admitted to Roll – Legal Profession Act 1976, ss. 94(3) & 107*

The respondent, an advocate and solicitor, acted for one Mohd Meerah ('the complainant') in a civil action. The suit was settled out of court for the sum of RM9,000. The respondent was to release the said sum to the complainant but failed to do so. In 1995, the complainant lodged a complaint with the Disciplinary Board. The Disciplinary Committee ('the DC') was appointed in 2002. The DC found the respondent to be in breach of s. 94(3) of the Legal Profession Act 1976 ('the LPA') and recommended that the respondent be struck off the Roll of Advocates and Solicitors ('the Roll'). After the respondent was struck off the Roll, two applicants made an application to the Bar Council Compensation Fund ('BCCF') and in 2004, the Bar Council made a determination to pay out a total of RM80,532.41 to the two applicants. The respondent applied to the High Court to be reinstated to the Roll. In exercise of its discretionary powers enshrined in s. 107(1) of the LPA, the High Court allowed the application and restored the respondent's name to the Roll. It was only six months after the application for reinstatement did the respondent make full settlement of the monies owing to the BCCF and the payment to the complainant. In the present appeal, the appellant argued that the respondent (i) committed serious acts of dishonesty and/or fraudulent conduct in the discharge of an advocate and solicitor's duties; and (ii) failed to make restitution to the complainant before making this application for restoration as an advocate and solicitor.

Held (allowing appeal)
Per Umi Kalthum Abdul Majid JCA delivering the judgment of the court:

(1) The restitution by the respondent was made after the motion was filed and was an afterthought. In his affidavit in support, the respondent did mention about the complaint that resulted in his disbarment but he did not state that he made full restitution to the complainant. Only six

months after the application for restoration did the respondent make full settlement of the monies owing to the BCCF and the payment to the complainant. The payment of RM80,532.41 to the BCCF was only paid in full upon the request by the appellant. The respondent's motion was therefore premature. In any event, whatever restitution that was made by the respondent was grossly delayed - 19 years since the complainant's complaint was lodged and ten years for the respondent to make full restitution to the BCCF. The respondent had not, on the balance of probabilities, truly shown his repentance of his past deeds and that he was a fit and proper person to be re-admitted to the Roll. (paras 23 & 24)

Bahasa Malaysia *Headnotes*

Responden, seorang peguam bela dan peguam cara, bertindak bagi individu bernama Mohd Meerah ('pengadu') dalam satu tindakan sivil. Guaman tersebut diselesaikan di luar mahkamah dengan jumlah RM9,000. Responden sepatutnya menyerahkan jumlah tersebut kepada pengadu tetapi dia tidak berbuat demikian. Pada 1995, pengadu memfailkan aduan kepada Lembaga Disiplin. Jawatankuasa Disiplin dilantik pada 2002. Jawatankuasa Disiplin mendapati responden telah melanggar s. 94(3) Akta Profesion Undang-Undang 1976 ('APU') dan mengesyorkan agar nama responden digugurkan daripada Daftarai Peguam Bela dan Peguam Cara ('Daftarai'). Selepas nama responden digugurkan daripada Daftarai, dua pemohon memohon kepada Kumpulan Wang Pampasan Peguam Bela dan Peguam Cara ('BCCF') dan pada 2004, Majlis Peguam memutuskan untuk membayar RM80,532.41 kepada dua pemohon tersebut. Responden memohon kepada Mahkamah Tinggi agar namanya didaftarkan semula dalam Daftarai. Dalam menjalankan kuasa budi bicaranya yang termaktub dalam s. 107(1) APU, Mahkamah Tinggi membenarkan permohonan dan mendaftar semula nama responden dalam Daftarai. Responden membuat bayaran penuh wang yang terhutang kepada BCCF dan bayaran kepada pengadu. Dalam rayuan ini, perayu menghujahkan bahawa responden (i) tidak jujur dan/atau telah melakukan penipuan serius dalam perlaksanaan tugasnya sebagai peguam bela dan peguam cara; dan (ii) gagal mengembalikan wang pengadu sebelum membuat permohonan untuk didaftar semula sebagai peguam bela dan peguam cara.

Diputuskan (membenarkan rayuan)
Oleh Umi Kalthum Abdul Majid HMR menyampaikan penghakiman mahkamah:

(1) Pengembalian wang oleh responden dibuat selepas usul difailkan dan adalah satu fikiran semula. Dalam afidavit sokongannya, responden ada menyebut tentang aduan yang menyebabkan pengguguran namanya tetapi dia tidak menyatakan bahawa dia membuat bayaran penuh kepada pengadu. Responden membuat bayaran penuh wang yang terhutang dan bayaran kepada pengadu enam bulan selepas permohonan pendaftaran

semula namanya dibuat. Bayaran penuh jumlah RM80,532.41 kepada BCCF hanya dibuat apabila diminta oleh perayu. Oleh itu, usul responden pramatang. Dalam apa-apa jua keadaan, apa-apa restitusi yang dibuat oleh responden terlampau lewat - 19 tahun sejak aduan pengadu dan 10 tahun untuk responden membuat restitusi penuh kepada BCCF. Responden tidak, atas imbangan kebarangkalian, mempamerkan kekesalan terhadap perbuatan lampaunya dan bahawa dia seorang yang layak dan sesuai untuk didaftar semula dalam Daftarai.

Case(s) referred to:
Chan Chow Wang v. Malaysia Bar [1986] 1 LNS 94 HC ***(refd)***
Narindar Singh Kang v. Law Society of Singapore [2007] 4 SLR 641 ***(refd)***
Teoh Hooi Leong v. Bar Council [1991] 2 CLJ 1117; [1991] 1 CLJ (Rep) 451 SC ***(refd)***
Thavananthan Balasubramaniam v. Majlis Peguam Malaysia [2009] 6 CLJ 217 FC ***(refd)***

Legislation referred to:
Legal Profession Act 1976, ss. 80(8), 88A, 94(3)(c), 107(1), (3), (4), (5)

For the appellant - Jack Yow; M/s Rahmat Lim & Partners
For the respondent - Abdul Hamid Menon; M/s RK Menon & Co
- Nor Liana Hashim; M/s Kamal Hisham & Assocs

[Editor's note: For the High Court judgment, please see Dharshan Singh Atma Singh v. Majlis Peguam Malaysia [2015] 4 CLJ 1083 (overruled).]

Reported by Najib Tamby

JUDGMENT

Umi Kalthum Abdul Majid JCA:

[1] This is an appeal against the decision of the High Court dated 24 November 2014 in allowing the respondent's application for restoration to the Roll as an advocate and solicitor of Malaya. The decision of the High Court was a unanimous decision by a panel of three judges pursuant to s. 107(4) of the Legal Profession Act 1976 (LPA) . The amendment to s. 107 of the LPA in 2014 (the amendment came into force on 3 June 2014 *vide* P.U.(B) 262/2014) in which sub-s. 107(5) was added making this appeal before us in the Court of Appeal possible.

Brief Facts

[2] The brief facts of the case are as follows.

(a) The respondent was admitted as an advocate and solicitor of the High Court in Malaya around the year 1990 and was registered as a member of the Bar Council of Malaysia ('BC') bearing membership registration number BC/D/056. Thereafter, the respondent began legal practice as a legal assistant in a firm in Penang and several other legal firms until early or the middle of 1993 when he opened his own solicitor's firm in the name and style of Dharshan Singh Nanua and Associates in Parit Buntar, Perak until sometime in the year 2000.

A (b) The respondent had acted for one Mohd Meerah bin Kader Myden ("complainant") in the Civil Action No. 73-24-94 in the Parit Buntar Magistrate's Court.

(c) The suit was settled out of court for the sum of RM9,000 which was paid in cheque, and the respondent was to convert the cheque to cash for the
B complainant.

(d) However, the respondent failed to release the RM9,000 to the complainant even after numerous attempts by the complainant to contact the respondent.

C (e) On 21 November 1995, the complainant lodged a complaint to the disciplinary board ("DB") on the ground that the respondent had failed to release the sum of RM9,000 being out of court settlement in respect of the civil action.

(f) On 17 April 2002, the disciplinary committee ("DC") was appointed.
D On the date of the hearing of the complaint on 6 June 2002, the DC found the respondent in breach of s. 94(3)(c) of the LPA. The DC in its report dated 6 June 2002 recommended that the respondent be struck off the Roll of Advocates and Solicitors of the High Court in Malaya ("Roll") and he was struck off the Rolls on 11 October 2002.

E (g) Prior to the respondent's disbarment between 1994 to 2000, there were 14 complaints made by various persons against the respondent and the nature of the allegations was serious ranging from fraud, monetary dishonesty and gross disregard. While eight complaints were dismissed, at least three complaints which were withdrawn and as such, there was
F no determination made in respect of the three complaints.

(h) The respondent was made a bankrupt by two separate bankruptcy orders on 4 November 1998 and 18 April 2001 and the two orders were set aside on 25 February 2014.

G (i) After the respondent was struck off the Roll, there were two applicants (Goh Ah Bah and Goh Joo Or) who made an application to the Bar Council Compensation Fund and on September 2004, the Bar Council made a determination to pay out a total of RM80,532.41 to the two individuals.

H (j) On 3 March 2014, the respondent filed the application to be reinstated to the Roll as an advocate and solicitor of the High Court in Malaya. On 24 November 2014 the High Court granted the order reinstating the respondent to the Roll and hence this appeal.

(k) It was only six months after the application for reinstatement did the
I respondent make full settlement of the monies owing to the Bar Council Compensation Fund and the payment to the complainant (Mohd Meerah bin Kader Myden).

High Court's Decision

[3] The learned judge, in allowing the respondent's application, found that the provisions of s. 107(1) of the LPA, which were operative in this case, were explicitly clear that the discretion laid with the court to restore the name of any advocate and solicitor to the Roll who had been removed from or struck off the Roll if the court thought that it was fair and reasonable to do so.

[4] In finding for the respondent, the High Court held that the paramount consideration in the exercise of the court's discretionary powers was whether the respondent had been shown to be a fit and proper person to be allowed to resume practice at the Bar. Further, disbarment as a result of professional misconduct or a criminal conviction is not intended by the Legislature to be permanent as apparent from the provisions of s. 107 of the LPA.

[5] The fact that there was a lapse of 12 years from date of disbarment to the date of application was made should not be an overriding factor taken against the respondent as detrimental to his restoration so long as he could provide a plausible explanation, which the court found he had done. The High Court found that the respondent had made restitution in the sum of RM9,000 at the commencement of the proceedings. The payment was made into court with the consent of the BC. Therefore there was no issue as to the respondent not having made restitution.

[6] The High Court found that there was no serious dispute by the appellant that the respondent had shown himself to be truly remorseful for his past misdeeds and misconduct that resulted in him being struck off the Roll. The long lapse from the date of disbarment and the blameless life he had led since then till the date of hearing was evidence of the respondent being rehabilitated and which was not contradicted by the BC.

[7] The High Court was not persuaded by the opposition of the BC to the application in regard to the respondent's dishonesty in the course of his professional practice as evident from the long list of complaints made by his clients to the BC prior to his disbarment, out of which eight had been dismissed by the DB. The High Court held that the other complaints which did not result in the respondent being found guilty of misconduct should not be taken into consideration in determining whether he is currently a fit and proper person for readmission to the Roll. Any reference to these complaints would thus be prejudicial to the case of the respondent on the ground of irrelevancy to the issue at hand.

[8] The High Court found, from the evidence presented and the materials before the court, that the applicant had satisfied the test enunciated in *Chan Chow Wang v. Malaysia Bar* [1986] 1 LNS 94; [1986] 2 MLJ 159 and had discharged the onus to establish the three elements as required under the test for the order of restoration to be made and allowed the application.

A **The Appeal**

[9] Before addressing the appeal at hand, the position of law on the role of the court in dealing with an application for restoration as an advocate and solicitor of the High Court in Malaya is provided in s. 107 of the LPA as follows:

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High Court may restore an advocate and solicitor

107(1) The High Court may, if it thinks fair and reasonable, at any time order the Registrar to restore to the Roll the name of an advocate and solicitor which has been removed from, or struck off, the Roll.

C (2) Any application that the name of an advocate and solicitor be restored to the Roll shall be by originating motion supported by affidavit, before the High Court.

(3) Notice of the motion shall be served on the Bar Council which shall be represented at the hearing of the motion and shall place before
D the Court a report which shall include copies of the record of any proceedings as the result of which the name of the advocate and solicitor was removed from, or struck off, the Roll and a statement of any facts which have occurred since the name of the advocate and solicitor was removed from, or struck off, the Roll and which in the opinion of the Bar Council or any member of it are relevant to be considered or to be
E investigated in connection with the application.

(4) In exercise of its jurisdiction under this section, the High Court shall comprise three Judges. (Since deleted by Act A1444/2012)

(5) Any appeal against the decision of the High Court shall lie to the Court of Appeal and thereafter to the Federal Court. (Added by Act
F A1444/2012).

[10] In the case of *Teoh Hooi Leong v. Bar Council* [1991] 2 CLJ 1117; [1991] 1 CLJ (Rep) 451; [1991] 2 MLJ 190 Hashim Yeop A Sani CJ (Malaya) (as he then was) at at p. 455 (CLJ); p. 192 (MLJ) para. C, right column, said that the word 'fair' expressly provided in s. 107 of the LPA
G means:

The word 'fair' must necessarily mean that the decision must be fair firstly to the members of the public with whom the applicant will be renewing professional relations once re-admitted because the law seems to protect not only the profession but also the public from errant lawyers.

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The decision must also be fair to the profession and to his colleagues in the profession. The appellant here produced several letters from senior members of the legal profession exhibited at pp 72-77. The Bar Council in its letter at p 79 of the appeal record stated that it would not object to the application. The Bar Council did not object to the application before
I the High Court and maintained the same stance in the appeal before this court. On 22 September 1989 in his report and statement of facts the President of the Malaysian Bar stated that the Council had no reason to

doubt the appellant's declaration of remorse and repentance and had no reason to doubt the expressions of opinion as to the appellant's character and fitness for re-admission to the Roll.

The word 'fair' also requires that the decision must be fair to the court itself because when re-admitted the appellant will be an officer of the court.

Last but not least the decision must be fair to the appellant. True he was convicted under s 409 of the Penal Code and by all counts it is a serious offence especially to an advocate and solicitor. True the court must necessarily be disinclined to restore the name of an advocate and solicitor who had committed a misconduct and the onus of an applicant for admission under s 107 of the Act is a heavy one. But the duty of the court is to look at the circumstances and all the materials available to satisfy itself that an applicant has repented and reformed and there is a strong likelihood that he is not going to repeat the misconduct.

The learned Supreme Court Judge further explained at pp. 455-456 (CLJ); p. 193 (MLJ), para. C, left column:

The court should not however forget that once removed from the roll it must not be construed that the door is shut forever to the lawyer. A conviction should not be regarded in every case as a permanent unfitness. Disbarment is not necessarily intended to be permanent but that a heavy burden lay upon an applicant to show that he is now a fit and proper person to have his name restored to the Roll. The lapse of time since the conviction is thus a material consideration. It is true that there should be strong disinclination to re-admit to the profession an advocate and solicitor who had been guilty of improper conduct. The principle that once a solicitor has been struck off the Roll for dishonesty he cannot be restored unless there are exceptional circumstances should no longer apply in absolute terms. If an advocate and solicitor lives a blameless life and there is evidence that he has rehabilitated himself generally and there are members of the profession who can vouch to this change, that may overcome the initial misconduct. As stated in *Ex parte FE Maddocks Cohen* [1956] 73 WN (NSW) 126:

> There must be a strong disinclination to admit to the profession of a solicitor any person who has been shown ever to have been guilty of improper conduct. It is a disinclination founded upon the safety of such a course and the need of strictness in maintaining the standards of the profession. But the false steps of youth and early manhood are not always final proof of defective character and unfitness. The presumption which, according to circumstances, they may appear to raise may surely be overcome by a subsequent blameless career.

[11] In *Chan Chow Wang v. Malaysian Bar* (*supra*), Harun J (as he then was) held at p. 160 (MLJ) para. H, left column:

> … In re-admitting applicants to the Bar, the Court has a duty to litigants and to the legal profession to ensure that such persons are of the highest integrity and honour. The Court must also be satisfied, in the public interest, that the Applicant is not likely to repeat these offences if he is re-admitted. The onus is therefore on the applicant to show that:
>
> (a) there has been such a change in his character as to make him a fit and proper person to resume practice at the Bar,
>
> (b) he is truly penitent; and
>
> (c) he has made restitution.

[12] The Federal Court in *Thavananthan Balasubramaniam v. Majlis Peguam Malaysia* [2009] 6 CLJ 217, per Zulkefli Makinudin FCJ (now CJ Malaya) at p. 226:

> [6] The main issue for consideration in this appeal is whether it is fair and reasonable to restore the appellant to the roll. Following from there is the question as to how long the appellant shall wait from the time he was struck off the roll until he is allowed to apply to be restored to the roll. I am of the view that each case must be considered on its own special factual circumstances bearing in mind there is no time frame stipulated under s. 107 of the LPA before a disbarred member can be restored to the roll. I am also of the view that the sentences meted out on other similar comparable cases to the appellant's case should be taken into consideration in determining whether it is fair and reasonable to restore the appellant to the roll.

[13] On the standard of proof to be applied, learned counsel for the appellant submitted that the standard is higher than a balance of probability. In *Narindar Singh Kang v. Law Society of Singapore* [2007] 4 SLR 641, at p. 651, Andrew Phang JA held as follows:

> 29 Secondly, "[t]he application of a person who has previously been struck off the roll for grossly improper conduct must necessarily be subjected to stricter scrutiny than that of a new entrant to the profession who has no adverse record" [emphasis added] (see *Re Ram Kishan* (at [14])). Indeed, as Prof Tan Yock Lin has observed in his learned work, *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths Asia, 2nd Ed, 1998) at p 101:
>
> > It may not be altogether inaccurate to describe it as proof beyond reasonable doubt. If so, since the applicant can only be removed by proof beyond reasonable doubt, there is parity in requiring him to prove beyond reasonable doubt his fitness for replacement on the roll.
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> The above observations may set the required standard a little too high. However, it is clear, in our view, that the burden of proof must necessarily be a heavy one and ought, in any event, to be higher than the normal civil standard of proof on a balance of probabilities.

[14] Before us, learned counsel for the appellant in opposing the motion, raised two grounds namely: A

(a) that the respondent committed serious acts of dishonesty and/or fraudulent conduct in the discharge of an advocate and solicitor's duties; and

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(b) that the respondent had failed to make restitution to the complainant before making this application for restoration as an advocate and solicitor.

[15] On the first issue, learned counsel for the appellant submitted that the respondent committed an offence under s. 94(3)(c) of the LPA. It was an C offence which was serious in nature because it involved dishonesty or fraudulent conduct in the discharge of the advocate and solicitor's duties. The appellant referred to the Bar Council's report p. 121 Vol. 2 Part B & C of the appeal record. The report was made pursuant to s. 107(3) of the LPA. In the said report, it was stated that there were 14 official complaints made D against the respondent prior to the complainants' complaint which led to the respondent's disbarment. Amongst the complaints lodged against the respondent were five complaints on monetary dishonesty, one complaint on dishonesty/fraud; and five complaints on gross disregard.

[16] Learned counsel for the appellant submitted that the learned High E Court Judge had failed to appreciate the salient facts described in the Bar Council's report, at pp. 122 to 123, Part B and C appeal record, where it was stated that although the complainant by the name Kesavan a/l Govindasamy had withdrawn the complaint against the respondent, the respondent till to date has failed to prove that the respondent has made full restitution to that F complainant. The learned High Court Judge had failed to consider that the respondent had failed to furnish proof of restitution to the complainant.

[17] It was also submitted by the appellant that the learned High Court Judge has failed to consider that the respondent had committed a serious act of misconduct which resulted in the appellant having to pay compensation G to the complainants Goh Ah Bah and Goh Joo Or. It was reported that there were two claims made by them to the Bar Council Compensation Fund. On September 2004, the BC made a determination to pay out RM80,532.41 to the two individuals. It was submitted that payment from the Bar Council Compensation Fund is only made when there is loss arising from dishonesty H as shown in s. 80(8) of the LPA which reads as follows:

> Where it is proved to the satisfaction of the Bar Council that any person has sustained loss in consequence of dishonesty on the part of any advocate and solicitor or any clerk or servant of the advocate and solicitor in connection with that advocate and solicitor's practice in Malaysia as an I advocate and solicitor, or in connection with any trust of which that advocate and solicitor is a trustee, then subject to this section, the Malaysian Bar may, if the Bar Council thinks fair and reasonable, make or grant to that person out of the Fund for the purpose of relieving or mitigating that loss.

[18] Learned counsel for the respondent submitted that the learned judge had taken into consideration that most of the complaints made against the respondent had been withdrawn and dismissed including the complaint made by Kasavan a/l Govindasamy. Kasavan a/l Govindasamy had withdrawn his complaint on 8 December 2000 and the appellant's application pursuant to s. 88A of the LPA against the respondent had been withdrawn by the appellant. Furthermore, the appellant only raised the issue of making good the restitution to the complainant/Kasavan in the report. Nowhere was these averments stated in any of the appellant's affidavit in order to allow the respondent to respond to the said averments.

[19] With regard to the issue raised by the appellant that the respondent had failed to make restitution to the complainant before making this application for restoration as an advocate and solicitor, it was submitted by the appellant that the restitution made by the respondent was a mere afterthought seeing that there was gross delay in restitution by the respondent. At the time the respondent filed this application to be reinstated to the Roll on 3 March 2014, the respondent has yet to make restitution to the complainant. The respondent's restitution to the complainant was only made good on 9 October 2014, more than 19 years since the complainant's complaint was lodged on 20 October 1995. This was done by the respondent depositing the full sum of RM9,000 into the Johor Bahru High Court pursuant to order dated 24 September 2014.

[20] It was also highlighted by the appellant that there was a delay of about ten years by the respondent to make full restitution of the sum of RM80,532.41 to the Bar Council Compensation Fund. The sum of RM80,532.41 was paid out of the Bar Council Compensation Fund in September 2004 to two other complainants Goh Ah Bah and Goh Joo Or. It was only on 18 September 2014 that the respondent made good the full and final sum of monies paid out from the Bar Council Compensation Fund.

[21] In reply to the issue of restitution which was due to the complainant in the sum of RM9,000, learned counsel for the respondent submitted that the appellant had clearly stated that they had no objection to the said sum be paid into court. The BC had also confirmed that the payment had been paid into court. Therefore the learned judge did not err in law or fact in finding that there was no issue relating to restitution since the respondent had paid the said sum into court.

[22] On the issue of the Bar Council Compensation Fund payment for the sum of RM80,532.41, the respondent submitted that the said sum had been paid by the respondent by way of instalments since January 2014 to September 2014 to the appellant. The respondent had paid the balance payment of RM62,534.41 in lump sum *via* banker's cheque. The appellant had also confirmed receiving the said payment from the respondent. Hence there was no issue on this matter. This payment was received without any objections and this averment on afterthought was only raised during the appeal stage wherein the appellant did not plead this ground in the affidavit.

[23] We agreed with the submission of learned counsel for the appellant that the restitution made by the respondent in this case was an afterthought by the respondent. The respondent in his affidavit in support affirmed on 3 March 2014 did mention about the complaint that had resulted in his disbarment but the respondent had failed to state that he had made full restitution to the complainant. Only after six months after the application for restoration did the respondent make full settlement of the monies owing to the Bar Council Compensation Fund and the payment to the complainant (Mohd Meerah bin Kader Myden). We also found that the payment of RM80,532.41 to the Bar Council Compensation Fund was only paid in full on 18 September 2014 upon the request by the appellant. Lastly, to this date, there is no evidence of the respondent making payment to Kasavan a/l Govindasamy (another complainant) of RM110,076 in respect of a release of stakeholder sum and which the respondent had issued a dishonoured cheque to Kasavan a/l Govindasamy.

[24] But more importantly, the restitutions made by the respondent were made after the motion was filed. This meant that at the time when the motion was filed the respondent had not made any restitution to the complainant (Mohd Meerah bin Kader Myden), to the Bar Council Compensation Fund in regard to the complaints by Goh Ah Bah and Goh Joo Or, and to Kasavan a/l Govindasamy. That being the case, we agreed with the appellant's submission that the respondent's motion was therefore premature in view of the requirements laid down by Harun J in the case of *Chan Chow Wang v. Malaysian Bar (supra),* with which requirements we agreed. The learned High Court Judge had failed to take into account the fact of the premature application when they ruled that the respondent should be admitted to the Roll since he had already made restitution. This was more so since the respondent had not tendered proof that he had made payment to Kasavan a/l Govindasamy in the sum of RM110,076. The court, in hearing such motion, should bear in mind the various authorities cited by us before this on the need to take into account various parties' interests in cases of this nature and not to over emphasise the "repentance" shown by the respondent when he made the said restitutions (which we had noted was not made fully). In any event, whatever restitution that was made by the respondent was grossly delayed – in the case of the complainant, 19 years since the complainant's complaint was lodged; and about ten years for the respondent to make full restitution to the Bar Council Compensation Fund. What all these showed us was that the respondent had not, on the balance of probabilities, truly shown his repentance of his past deeds and that he is a fit and proper person to be readmitted to the Roll.

[25] We therefore allowed this appeal for the reasons stated above. We made no order as to costs. Deposit was refunded.